

RECEIVED & INSPECTED

MAR 29 2004

FCC - MAILROOM

March 26, 2004

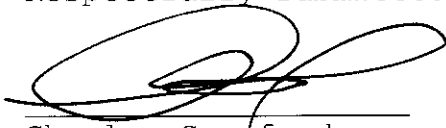
Ms. Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby - TW - A325  
Washington, D.C. 20554

Re: Petition for Rule Making  
Maysville, Oklahoma

Dear Ms. Dortch:

Enclosed is an original and four (4) copies of a  
Petition for Rule Making to add Channel 251A at Maysville,  
Oklahoma.

Respectfully submitted,



Charles Crawford  
4553 Bordeaux Ave.  
Dallas, Texas 75205  
(214) 520-7077 Tele  
(214) 443-9308 Fax

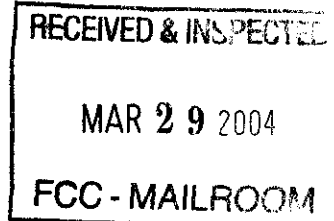
MayCover

No. of Copies rec'd 0+4  
List ABCDE

fm-mB

04-71

Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of                    )  
  )  
Amendment of 73.202 (b)    )    MB Docket No. \_\_\_\_\_  
Table of Allotments        )  
FM Broadcast Stations       )  
(Maysville, Oklahoma        )

To: John Karousos, Assistant Chief  
Audio Division of the  
Media Bureau

PETITION FOR RULE MAKING

Pursuant to 47 C.F.R. 1.401, Charles Crawford respectfully petitions the FCC to institute a Rule Making proceeding to amend the FM Table of Allotments to add Channel 251A at Maysville, Oklahoma.

DISCUSSION

Petitioner respectfully submits that the public interest would be served by allocating Channel 251A to Maysville, Oklahoma as that community's first local service. Maysville is an incorporated town with a population of 1,313 people.<sup>1</sup> Maysville has its own mayor, its own post office, its own zip code, its own police department, Chief of Police Scott Ficklin, its own fire

---

<sup>1</sup> 2000 U.S. Census

department, city hall, school system and a number of local churches. The proposed channel 251A will provide additional diversity and an outlet for local self-expression to Maysville residents and therefore is in the public interest.

Attached hereto is a channel study confirming that Channel 251A can be allocated to Maysville, Oklahoma, consistent with the FCC's FM separation rules. See revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). (See, Attachment A) Note: Pursuant to Report and Order, DA 04-782, MM Docket No. 01-293, released March 26, 2004, station KJMZ/ 251C1 at Lawton, Oklahoma has been ordered to Channel 250A at Cache, Oklahoma. (See, Attachment B) Also Note: Channel 249A at Purcell was dismissed by Report & Order, DA 03-1533, MM Docket No. 00-148, released May 8, 2003.<sup>2</sup> (See, Attachment C)

---

<sup>2</sup> A Petition for Partial Reconsideration and Request for Expedited Action was filed in MM Docket No. 00-148 on June 16, 2003. However, the allotment of Channel 249A/Purcell, Oklahoma was not included in that Partial Petition for Reconsideration. Additionally, on May 23, 2003, NM Licensing LLC, licensee of Station KLAQ(FM), Durant, Oklahoma, filed a Petition for Rulemaking which appeared to be short spaced to Channel 248C proposed in MM Docket 00-148 as an upgrade for KLAQ. On page 2, footnote #1, NM Licensing stated that its predecessor as licensee of KLAQ, Next Media Licensing, Inc., was one of the Joint Parties that had filed the Counterproposal in that case. NM Licensing further stated in that footnote that it will not file a petition for reconsideration for the decision denying Channel 248C allotment at Keller. Consequently, relying on NM Licensing's statement, the Commission issued a Notice of Proposed Rulemaking for Durant, Oklahoma and Whitewright, Texas, MB Docket No. 03-245. Note: on February 2, 2004, NM Licensing LLC withdrew its request to allot Channel 248C2 to Whitewright, Texas in MB Docket No. 03-245, without any explanation.

Reference coordinates for Channel 251A at Maysville,  
Oklahoma are:

34 49 00 N  
97 24 18 W

Should this petition be granted, and Channel 251A be allotted to Maysville, Oklahoma, Petitioner will apply for Channel 251A, and after it is authorized, will promptly construct the new facility.

The factual information provided in this Petition for Rule Making is correct and true to the best of my knowledge.

Respectfully submitted,



Charles Crawford  
4553 Bordeaux Ave.  
Dallas, Texas 75205  
(214) 520-7077      Tele  
(214) 443-9308      Fax

cc: Gene A. Bechtel, Law Office of Gene Bechtel, Suite 600, 1050 17<sup>th</sup> Street, N.W., Washington, D.C. 20036, telephone (202) 496-1289, telecopier (301) 762-0156, attorney for Charles Crawford. It is requested that the Commission and any parties who may file pleadings in the captioned matter serve copier to Mr. Bechtel as well as Charles Crawford.

March 26, 2004

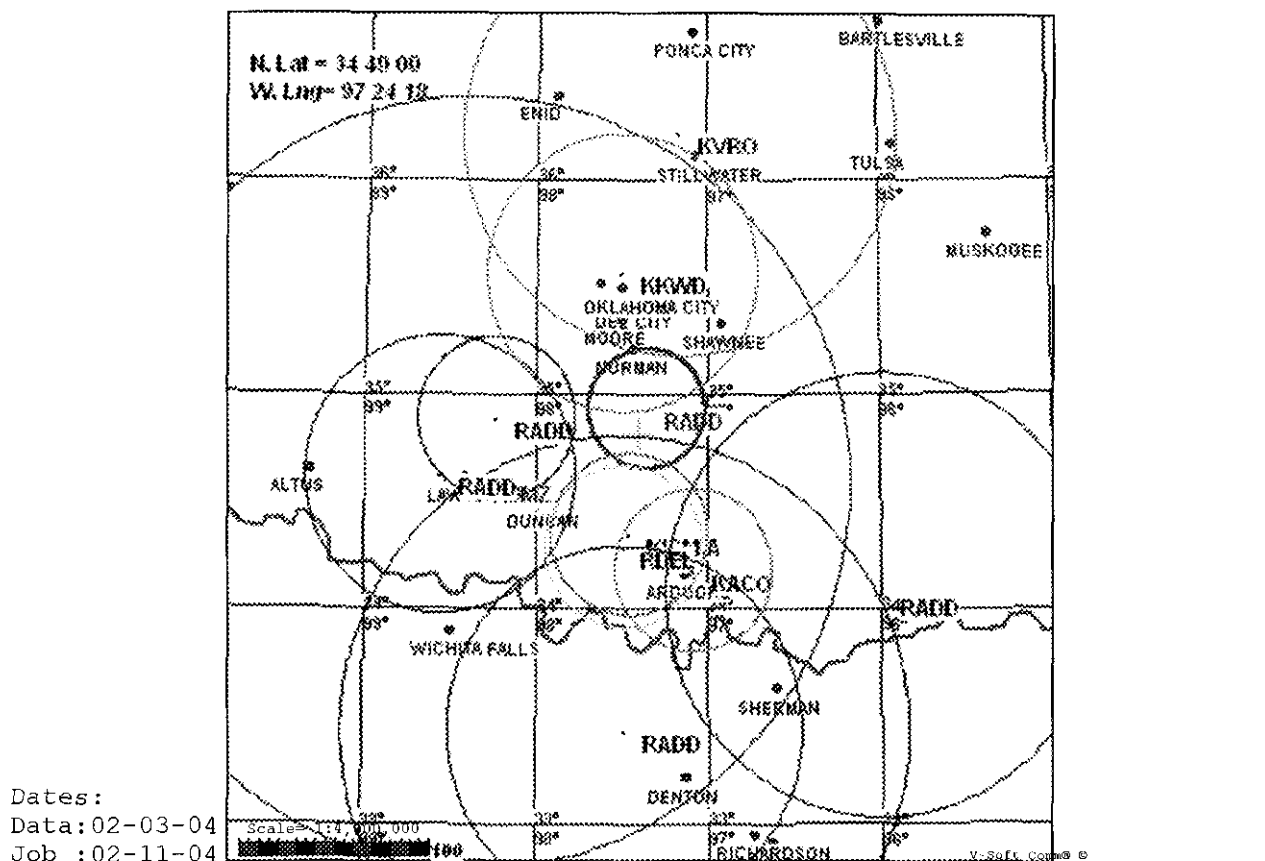
Maysville

---

**Attachment A**

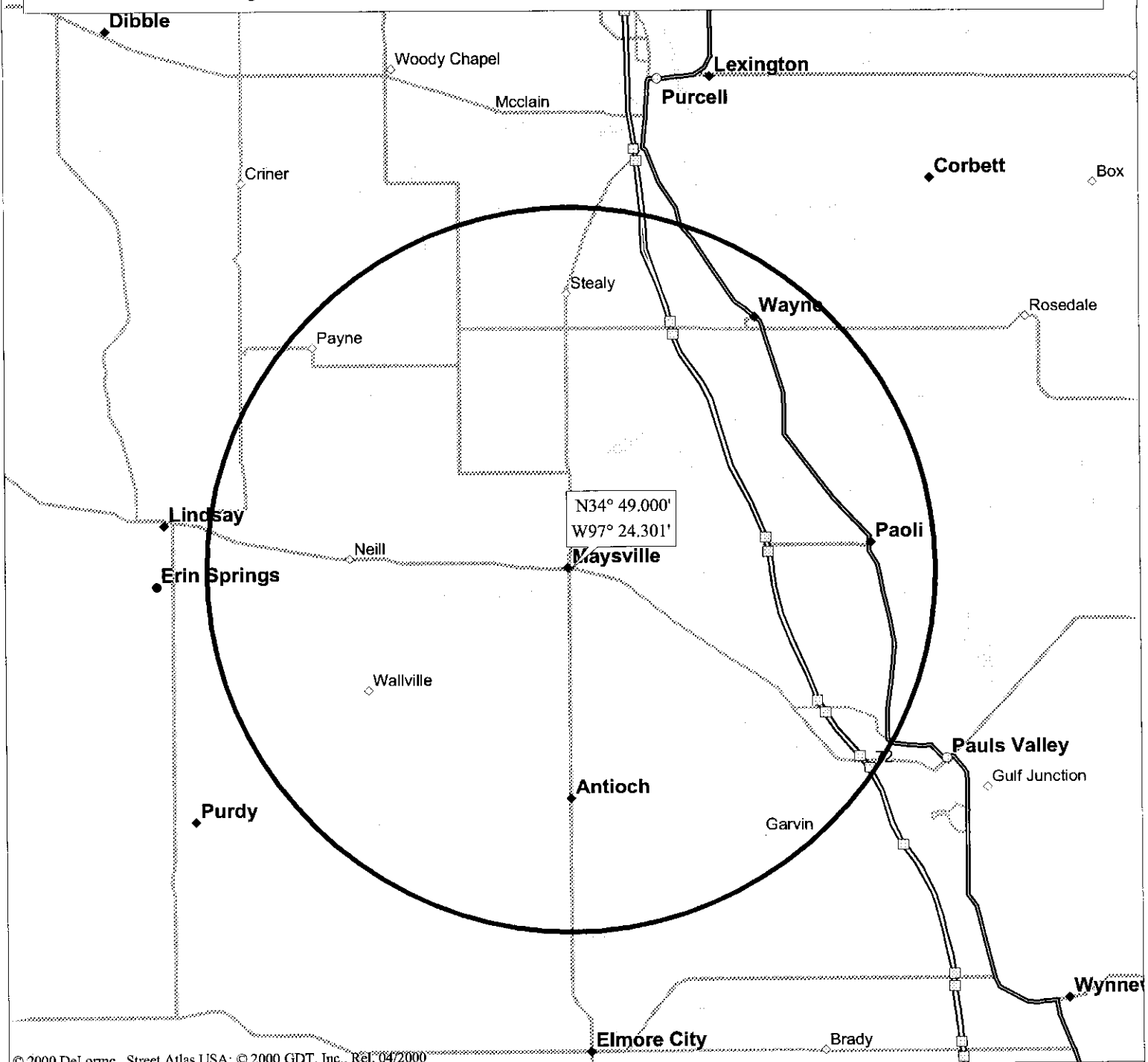
(Channel Study for Channel 251A at Maysville, Oklahoma)

FM PROSP<sup>(TM)</sup> LOCATE STUDY CH 251 A 98.1 MHz



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
RDEL	251C1	DEL	Lawton	OK	90.38	254.1	200.0	-109.62
KJMZ	251C1	LIC	Lawton	OK	90.38	254.1	200.0	-109.62
RADD	249A	ADD	Purcell	OK	14.10	19.5	31.0	-16.90
RADD	249A	ADD	Purcell	OK	14.10	19.5	31.0	-16.90
RADD	252C0	ADD	Bridgeport	TX	153.22	182.8	152.0	1.22
KICM	249C3	LIC	Healdton	OK	52.01	185.5	42.0	10.01
KICM.A	249C3	APP	Healdton	OK	52.08	185.2	42.0	10.08
KKWD	250A	LIC	Edmond	OK	83.99	354.1	72.0	11.99
RDEL	249C3	DEL	Healdton	OK	58.82	187.6	42.0	16.82
RADD	253C3	ADD	Apache	OK	76.25	276.6	42.0	34.25
RDEL	253C3	DEL	Ardmore	OK	76.32	157.2	42.0	34.32
KACO	253C3	LIC N	Ardmore	OK	76.32	157.2	42.0	34.32
RADD	250A	ADD	Cache	OK	107.91	259.1	72.0	35.91
RADD	251A	ADD	Bennington	OK	153.78	122.5	115.0	38.78
KVRO	251A	LIC	Stillwater	OK	157.17	7.9	115.0	42.17
RADD	248C	ADD	Keller	TX	153.22	182.8	95.0	58.22
RADD	248C	ADD	Keller	TX	153.22	182.8	95.0	58.22

# Maysville, OK CH 251A 70 dBu



© 2000 DeLorme. Street Atlas USA; © 2000 GDT, Inc., Rel. 04/2000

Mag 11.00  
Wed Feb 11 13:34 2004  
Scale 1:250,000 (at center)

5 Miles

5 KM

- |  |                           |  |        |
|--|---------------------------|--|--------|
|  | Local Road                |  | Locale |
|  | US Highway                |  | Land   |
|  | Interstate/Limited Access |  | Water  |
|  | Major Connector           |  |        |
|  | State Route               |  |        |
|  | Exit                      |  |        |
|  | County Seat               |  |        |
|  | Small Town                |  |        |

**Attachment B**

(Report & Order ordering KJMZ/ 251C1 at Lawton, Oklahoma to  
Channel 250A/ Cache, Oklahoma)



**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 01-293
FM Broadcast Stations.	)	RM-10302
(Crowell, Bonham, Bridgeport, Palestine, Ranger,	)	RM-10547
Stephenville, Wellington, Texas; Apache,	)	
Ardmore, Bennington, Cache, Elk City, Lawton,	)	
Oklahoma). <sup>1</sup>	)	

**REPORT AND ORDER**

**Adopted: March 24, 2004**

**Released: March 26, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*<sup>2</sup> issued at the request of Jeraldine Anderson ("Petitioner"); (2) supporting comments filed by the Petitioner; (3) a counterproposal filed by North Texas Radio Group, L.P. ("North Texas") and A.M. & P.M. Communications, L.L.C. ("AM & PM");<sup>3</sup> (4) a withdrawal of expression of interest filed by the Petitioner; and (5) reply comments filed by North Texas and AM & PM.

**BACKGROUND/COMMENT SUMMARY**

2. At the request of the Petitioner, the *NPRM* proposed the allotment of Channel 250C3 to Crowell, Texas, (pop. 2,600).<sup>4</sup> In response to the *NPRM*, the Petitioner filed brief supporting comments, reiterating her continuing interest to file an application to construct an FM station on Channel 250C3 in Crowell.

3. North Texas, the licensee of Stations KBOC(FM), Bridgeport, TX, KFYZ(FM), Bonham, TX, and KYKK(FM), Palestine, TX, and AM & PM, licensee of Station KAOC(FM), Ardmore, Oklahoma, jointly filed a *timely counterproposal*.<sup>5</sup> The counterproposal seeks the upgrade of Station KBOC(FM), Bridgeport, from Channel 252A to Channel 252C0 and reallocations and changes of communities of license for the Bonham, Palestine, and Ardmore stations. The counterproposal is

<sup>1</sup> The communities of Bonham, Bridgeport, Palestine, Ranger, Stephenville, Wellington, Texas, and Apache, Ardmore, Bennington, Cache, Elk City, and Lawton, Oklahoma, have been added to the caption.

<sup>2</sup> *Crowell, TX*, 16 FCC Rcd 18078 (MMB 2001) ("*NPRM*").

<sup>3</sup> The counterproposal was placed on *Public Notice* on August 16, 2002, Report No. 2570.

<sup>4</sup> The *NPRM* proposed the allotment of Channel 260C3 to Crowell as a second local service because an earlier filed proposal was pending in MM Docket No. 01-210 to allot Channel 293C3 to Crowell. However, a request to withdraw the Channel 293C3 allotment proposal at Crowell was subsequently approved, thereby making the Petitioner's proposed allotment at Crowell a potential first local service.

<sup>5</sup> North Texas and AM & PM are under common ownership.

mutually exclusive with the *NPRM's* proposal because one of the required channel changes, the downgrade and reallocation of Station KJMZ(FM) from Channel 251C1 at Lawton, Oklahoma, to Channel 250A at Cache, OK, is short-spaced to Channel 250C3 at Crowell.<sup>6</sup>

4. On the deadline for filing reply comments, the Petitioner submitted a request to withdraw her expression of interest in the allotment of Channel 250C3 at Crowell pursuant to Section 1.420(j) of the Commission's Rules, stating that she has entered into a settlement agreement with North Texas. Under the terms of the agreement, the Petitioner agrees to withdraw in return for the reimbursement of her legitimate and prudent expenses incurred in preparing and prosecuting her rulemaking petition. She states that she has decided not to pursue her interest in operating a station to serve Crowell. In reply comments, North Texas and AM & PM urge adoption of their counterproposal because it is unopposed.

5. After the pleading cycle ended, the Commission staff requested and the Petitioner submitted additional information regarding the settlement. Specifically, the Petitioner supplied an itemization of her legitimate and prudent expenses and documentation supporting the itemization.

### DISCUSSION

6. As a threshold matter, we will approve the withdrawal of the Petitioner's expression of interest in Channel 250C3 at Crowell. The settlement agreement complies with Section 1.420(j) because the Petitioner is withdrawing her interest in return for reimbursement of her itemized and documented out of pocket expenses incurred in pursuing her proposal. Further, the Petitioner and a principal of North Texas and AM & PM have certified that this is the only consideration for the withdrawal. Since no other interest has been expressed in the allotment of Channel 250C3 at Crowell, we will not make an allotment at that community.

7. With the elimination of the Crowell proposal, we will grant North Texas and AM & PM's counterproposal consistent with the public interest because it will provide first local services to four communities with a combined population of 6,680 and will result in a net gain of service to over 1,600,000 people within 12,003 square kilometers. The counterproposal involves seven inter-related channel changes, which we will discuss below.

8. To begin with, we will upgrade North Texas' Station KBOC(FM), Bridgeport, Texas, from Channel 252A to Channel 252C0 at a new site.<sup>7</sup> This upgrade will provide a gain of service to 1,875,234 persons in an area of 20,050 square kilometers, with no loss area. This upgrade in turn directly requires five related channel changes at other communities, which we will make. The first of these is the reallocation, downgrade, and change of community of license for Station KJMZ(FM) from Channel 251C1 at Lawton, Oklahoma, to Channel 250A at Cache, Oklahoma. This reallocation and change of community of license complies with Section 1.420(i) of the Commission's Rules because the two channels are mutually exclusive with each other and because it will result in a preferential arrangement of allotments under the FM allotment priorities.<sup>8</sup> Specifically, the reallocation and downgrade will result in a first local service to Cache,<sup>9</sup> triggering Priority 3. By way of comparison, retention of Channel 251C1 at

<sup>6</sup> See 47 C.F.R. § 73.207. The required spacing between Channel 250C3 at Crowell, TX, and Channel 250A at Cache, OK, is 142 kilometers whereas the actual spacing between these proposals is 131.9 kilometers.

<sup>7</sup> The reference coordinates for Channel 250C0 at Bridgeport, Texas, are 33-26-13 and 97-29-05.

<sup>8</sup> The FM allotment priorities are (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

<sup>9</sup> Cache (pop. 2,371) is a community for allotment purposes because it is incorporated, listed in the U.S. Census, and has numerous indicia of community status such as a local government, police department, water department, (continued....)

Lawton would be a tenth local service, triggering Priority 4.

9. While a staff engineering analysis reveals that there will be a loss of service to 149,502 persons within an area of 13,861 square kilometers, the loss area is well served with five or more services. Further, the licensee of Station KJMZ(FM) has submitted a statement, consenting to the reallocation and downgrade and declaring that it will file an application for a new transmitter site for Cache. North Texas also states that it will reimburse the licensee of Station KJMZ(FM) for the reasonable costs of making the requested modifications to its facilities.

10. Second, the upgrade at Bridgeport necessitates the reallocation, change of community of license, and relocation of transmitter site for Station KCUB(FM) from Channel 252A at Stephenville, TX, to Channel 253A at Ranger, TX. This proposal complies with Section 1.420(i) because the channels are mutually exclusive and because it creates a preferential arrangement of allotments. The reallocation will create a first local service to Ranger (pop. 2,584), triggering Priority 3,<sup>10</sup> while retention of the station at Stephenville would be a second local service under Priority 4. The reallocation and transmitter site relocation will create a loss of service to 27,740 persons within an area of 2,514 square kilometers. However, the loss area is well served with five or more aural services, and the loss is offset in part by a gain of service to 15,570 persons within an area of 2,514 square kilometers. The licensee of Station KCUB(FM) has provided a statement consenting to the changes and stating that it will apply to operate at a new transmitter site. Also, North Texas and AM & PM state that they will reimburse the licensee for the reasonable costs of making the requested modifications to its facilities.

11. The third required channel change is the downgrade of North Texas' Station KYYK(FM), Palestine, Texas, from Channel 252C2 to Channel 252C3.<sup>11</sup> North Texas proposes to change the transmitter site of Station KYYK(FM) in conjunction with the downgrade. According to a staff engineering analysis, there will be a loss of service to 123,959 persons within an area of 4,632 square kilometers, and a gain of service to 4,381 persons within 864 square kilometers. However, this loss of service is outweighed by the overall public interest benefits of the counterproposal, including first local services at four communities, and a net gain in service to over 1,600,000 persons.

12. Fourth, the Bridgeport upgrade requires the downgrade, reallocation, and change of community of license for North Texas' Station KFYZ(FM) from Channel 252C3 at Bonham, Texas, to Channel 251A at Bennington, Oklahoma. Bennington (pop. 289) is a community for allotment purposes because it is listed in the U.S. Census and possesses indicia of community status including a local government, police department, fire department, public schools, churches, and businesses. The downgrade and reallocation complies with Section 1.420(i) of the Commission's Rules because Channels 252C3 at Bonham and Channel 251A at Bennington are mutually exclusive and because the reallocation will result in a preferential arrangement of allotments.<sup>12</sup> Specifically, the reallocation will result in a first local service at Bennington, triggering Priority 3. By way of comparison, retention of Station KFYZ(FM) at Bonham would be a second local service under Priority 4 because of the presence of a local AM station.

---

(...continued from previous page)

businesses, schools, and churches. The reference coordinates for Channel 250A at Cache, OK, are 34-37-39 and 98-33-38.

<sup>10</sup> Ranger is a community for allotment purposes because it is incorporated and listed in the U.S. Census. It also has other indicia of community status such as a local government, fire department, police department, street and parks department, school district, newspaper, and businesses. The reference coordinates for Channel 253A at Ranger are 32-22-55 and 98-45-55.

<sup>11</sup> The reference coordinates for Channel 252C3 at Palestine, Texas, are 31-46-17 and 95-37-54.

<sup>12</sup> The reference coordinates for Channel 251A at Bennington, Oklahoma, are 34-04-00 and 95-59-52.

13. While there will be a loss of service to 62,295 persons within an area of 4,049 square kilometers, the loss area is well served with more than five aural services, and there will be a gain of service to 10,561 persons within an area of 2,494 square kilometers. A staff engineering analysis reveals that the gain area includes some underserved areas. Specifically, 174 people within 69.7 square kilometers will receive a third aural service; 1,875 people within an area of 396.9 kilometers will receive a fourth service; and 729 people within an area of 295.5 square kilometers will receive a fifth aural service.

14. The fifth required channel change is the reallocation, change of community of license, and transmitter site relocation for AM & PM's Station KACO(FM) from Channel 253C3 at Ardmore, Oklahoma, to Channel 253C3 at Apache, Oklahoma. Apache (pop. 1,616) is a community for allotment purposes because it is incorporated, listed in the U.S. Census, and has indicia of community status such as a local government, police and fire departments, a community center, a large number of businesses, a public library, churches, and schools. The reallocation and change of community of license complies with Section 1.420(i) because Channels 253C3 at Ardmore and Apache are mutually exclusive and the proposal results in a preferential arrangement of allotments. The reallocation to Apache will provide a first local service under Priority 3 while retention of the station at Ardmore would be a fifth local service, triggering lesser Priority 4. While there will be a loss of service to 56,848 persons within an area of 3,879 square kilometers, this loss is offset by a gain of service to 179,646 persons within 4,803 square kilometers. Moreover, the loss area is well served with more than five aural services.<sup>13</sup>

15. Finally, two other channel changes are required to reallocate Channel 253C3 at Apache, as well as to reallocate Channel 250A to Cache, Oklahoma. First, it is necessary to downgrade and change the transmitter site for Station KTIJ(FM), Elk City, Oklahoma, from Channel 253C to Channel 295C1.<sup>14</sup> While there will be loss of service to 25,414 persons within an area of 5,532 square kilometers and a gain of service to 8,220 persons, the net loss in service to 7,294 persons is offset by the overall public interest benefits of the counterproposal, including first local services at four communities and an overall net gain in service to more than 1,600,000 persons. The licensee of Station KTIJ(FM) has provided a statement, consenting to the downgrade and site change and stating that it will apply for the modified allotment. Also, North Texas and AM & PM state that they will reimburse the licensee for the reasonable costs of making the requested modifications to its facilities.

16. Second, the downgrade on Channel 253C3 at Elk City requires the substitution of Channel 253C3 for vacant Channel 298C3 at Wellington, Texas.<sup>15</sup> Channel 298C3 can be allotted to Wellington at its current reference coordinates.<sup>16</sup>

### ORDERING CLAUSES

17. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283(b) of the Commission's Rules, IT IS ORDERED, That effective May 10, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below as follows:

<sup>13</sup> The reference coordinates for Channel 253C3 at Apache, Oklahoma, are 34-53-34 and 98-14-01.

<sup>14</sup> The reference coordinates for Channel 295C1 at Elk City, Oklahoma, are 35-15-36 and 99-33-08.

<sup>15</sup> This channel was included in the inventory for vacant non-reserved band FM allotments in Broadcast Auction No. 37 that has been postponed. See *Public Notice*, DA 01-2148, released September 14, 2001, 66 FR 48467 (September 20, 2001).

<sup>16</sup> The reference coordinates for Channel 253C3 at Wellington, Texas, are 34-49-13 and 100-14-29.

<u>Communities</u>	<u>Channel Number</u>
Ardmore, Oklahoma	239C1
Bennington, Oklahoma	251A
Cache, Oklahoma	250A
Elk City, Oklahoma	232C3, 243C1, 295C1
Lawton, Oklahoma	231C, 237C3, 258C3, 267C1, 297C2
Apache, Oklahoma	253C3
Bonham, Texas	---
Bridgeport, Texas	252C0
Palestine, Texas	252C3
Ranger, Texas	253A
Stephenville, Texas	---
Wellington, Texas	248A, 253C3

18. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the licenses for the stations listed below ARE MODIFIED to specify operation on channels and/or communities listed below, subject to the following conditions:

<u>Station</u>	<u>Community</u>	<u>Channel</u>
KFYZ(FM)	Bennington, OK	251A
KJMZ(FM)	Cache, OK	250A
KTIJ(FM)	Elk City, OK	295C1
KACO(FM)	Apache, OK	253C3
KBOC(FM)	Bridgeport, TX	252C0
KYYK(FM)	Palestine, TX	252C3
KCUB(FM)	Ranger, TX	253A

- (a) Within 90 days of the effective date of this *Order*, the licensees shall submit to the Commission minor change applications for construction permits (Form 301).
- (b) Upon grant of the construction permits, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

19. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensees of Stations KBOC(FM), Bridgeport, TX, KFYZ(FM), Bennington, OK, KACO(FM), Ardmore, OK, KCUB(FM), Ranger, TX, and KJMZ(FM), Cache, OK, are required to submit rulemaking fees in addition to the fees required for the applications to effect the change in community of license and upgrade.

20. IT IS FURTHER ORDERED, That the request for withdrawal of expression of interest filed by Jeraldine Anderson IS GRANTED and the rulemaking petition (RM-10302) filed by Jeraldine Anderson IS DISMISSED.

21. IT IS FURTHER ORDERED, That the counterproposal (RM-10547) filed jointly by North Texas Radio Group and A.M. & P.M. Communications IS GRANTED.

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

23. For further information concerning this proceeding, contact Andrew J. Rhodes, Audio Division, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

**Attachment C**

(Report & Order dismissing Channel 249A at Purcell,  
Oklahoma)

Maysville

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations. )

(Quanah, Archer City, Converse, Flatonia, )

Georgetown, Ingram, Keller, Knox City, )

Lakeway, Lago Vista, Llano, McQueeney, )

Nolanville, San Antonio, Seymour, Waco and )

Wellington, Texas, and Ardmore, Durant, )

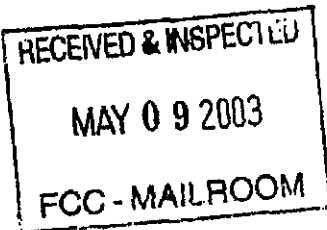
Elk City, Healdton, Lawton and Purcell, )

Oklahoma.)

MM Docket No. 00-148

RM-9939

RM-10198



**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: May 7, 2003

Released: May 8, 2003

By the Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making* in the captioned proceeding.<sup>1</sup> Nation Wide Radio Stations filed Comments and Reply Comments. First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties") filed a Counterproposal and Reply Comments. Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd. filed Joint Reply Comments. Elgin FM Limited Partnership and Charles Crawford ("Elgin-Crawford") jointly filed Reply Comments and Maurice Salsa filed Reply Comments.<sup>2</sup> For the reasons discussed below, we are dismissing both the initial proposal for Channel 233C3 at Quanah, Texas, and the Counterproposal.

Background

2. At the request of Nation Wide Radio Stations, the *Notice* in this proceeding proposed the allotment of Channel 233C3 to Quanah, Texas.<sup>3</sup> In response to the *Notice*, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. In one aspect of this Counterproposal, the Joint Parties propose the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallocation of Channel 248C to Keller, Texas, and modification of the Station KLAQ license to specify operation on Channel 248C at Keller, Texas. In order to accommodate this allotment, the Joint Parties propose three channel substitutions. Included among those substitutions was the

<sup>1</sup> 15 FCC Rcd 15809 (MM Bur. 2000).

<sup>2</sup> In this proceeding, Texas Grace Communications, Elgin FM Limited Partnership, Charles Crawford, Maurice Salsa, M&M Broadcasters, AM&FM Broadcasters and the Joint Parties have filed additional pleadings. In view of our action dismissing the Joint Parties Counterproposal, it will not be necessary to discuss these pleadings in the context of this *Report and Order* terminating this proceeding.

<sup>3</sup> Nation Wide Radio Stations has withdrawn its expression of interest in this allotment. In accordance with Section 1.420(j) of the Rules, Nationwide Radio Stations states that neither it nor any of its principals have been paid or promised any consideration for the withdrawal of its expression of interest in the Quanah allotment.



substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification of the Station KRZB permit to specify operation on Channel 230C1. On the basis of our own engineering review, Joint Reply Comments filed by Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd., and Reply Comments filed by Maurice Salsa, the proposed transmitter site (33-36-58 and 98-51-42) for the Channel 230C1 allotment at Archer City is short-spaced to a prior-filed application filed by AM & FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ) (the "KICM Class C1 Application").

3. Counterproposals that are in conflict with a previously filed application can be considered if the counterproposal is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice.<sup>4</sup> The Note also requires a counterproponent to show that it could not have known by exercising due diligence of the pending conflicting FM application. The Joint Parties and AM & FM Broadcasters submitted Reply Comments addressing this issue. Under the agreement, AM & FM Broadcasters agrees to file an application to downgrade Station KICM to Channel 229C2 in the event its application is granted and the Counterproposal is adopted. Pursuant to the agreement, the Joint Parties would "compensate" AM & FM Broadcasters for the downgrade of Station KICM. On August 20, 2001, the staff granted the KICM Class C1 Application.

#### Discussion

4. We dismiss the Counterproposal because the proposed Archer City Channel 230C1 allotment is short-spaced to the KICM Class C1 construction permit. The Joint Parties have not shown that they could not have known about the then-conflicting KICM Application. Nor have the Joint Parties sought to amend their Counterproposal to protect the proposed Archer City Channel 230C1 allotment.

5. The Commission does not entertain a short-spaced allotment that is contingent on the grant of another application.<sup>5</sup> This is precisely what the Joint Parties seek. The Archer City allotment is short-spaced to the KICM construction permit and contingent on the staff granting future applications by AM & FM Broadcasters for both a Class C2 construction permit and license. We reject Joint Parties argument that its downgrade proposal complies with the contingent application procedures set forth in Section 73.3517(e) of the Commission's Rules. Section 73.3517(e) permits the simultaneous acceptance of contingent *minor change applications*. It does not authorize the filing of contingent rulemaking petitions. Accordingly, the Counterproposal must be dismissed.

#### Alternative Proposals

6. The Joint Parties filed an alternative twelve-allotment proposal in anticipation of a staff determination that the Channel 230C1 Archer City allotment is impermissibly short-spaced to the KICM permit. We reject this alternative. A counterproposal must conflict with the proposal set forth in the *Notice*.<sup>6</sup> In this instance, none of these proposals conflict with Nation Wide Radio Station's initial proposal for a Channel 233C3 allotment at Quanah. As such, we will not bifurcate the Counterproposal or otherwise consider any of these proposals in the context of this proceeding.<sup>7</sup>

<sup>4</sup> See Note to Section 73.208 of the Rules; see also *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 8 FCC Rcd 4743 (1993).

<sup>5</sup> See *Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (MM Bur. 1988), *recon.* 3 FCC Rcd 6626 (MM Bur. 1988); see also *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (MM Bur. 1996).

<sup>6</sup> See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, n. 5 (1990).

<sup>7</sup> See also *Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas*, 3 FCC Rcd 6507 (MM Bur. 1988).

7. In the event that its Counterproposal can not be favorably entertained, the Joint Parties advance two alternative proposals. The staff no longer entertains alternative proposals set forth in counterproposals.<sup>8</sup> In any event, each of these alternatives fails to comply with our rules and procedures. The first proposal involves the proposal to reallocate Channel 248C to Keller, Texas, and modify the Station KLAK license to specify operation on Channel 248C at Keller. A Channel 248C allotment at Keller requires the substitution of Channel 230C1 at Archer City, and thus, cannot be considered. The second alternative only proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallocation of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway. The Joint Parties also proposed related channel substitutions necessary to accommodate this reallocation. However, none of these proposed channel substitutions conflict with the underlying Channel 233C3 allotment at Quanah, Texas, proposed in the *Notice*.

8. Accordingly, IT IS ORDERED, That the aforementioned proposal filed by Nation Wide Radio Stations for a Channel 233C3 allotment at Quanah, Texas, IS DISMISSED.

9. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by the Joint Parties IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>8</sup> See *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Red 9551 (MM Bur. 2001).